



RECEIVED

MAR 26 2001

TO 3600 MAIL ROOM

Atty. Dkt. No. 1423-9
Ser. No. 09/428,508

appropriate to correct the type. Applicant appreciates the Examiner's kindness in pointing out the typo.

The drawings are corrected by a separate paper.

Claim 23 was corrected in the Preliminary Amendment to depend from only claim 1. The dependency has now been changed to claim 1.

The expression "and/or" has been changed to "or" or to "and" as may be appropriate. It is thought that, after the patent issues, a judge would construe the claims under the Doctrine of Equivalent in the same manner that he would construe them if this Amendment had not been made.

Claims Rejections under USC § 102

As will be appreciated from an inspection of the German Bock patent (especially Figure 5), the central axis of each tire in Bock is aligned with the vertical and is not inclined. Hence Bock is irrelevant to claim 1, 3, 4, 5, 6 and 7.

The Examiner's view is that claims 25, 29, 30, 31 and 34 are anticipated by Bock. In particular, as can be gleaned from the verified translation, Bock does not disclose anything regarding the formation of a base or a retaining wall, which is an essential feature of applicants' invention, in general, and specifically in independent claim 25.

Independent claim 15, and its dependent claims disclose a reinforcing section of the retaining wall which is formed by lengths of tire tread or conveyor belt. On a closer inspection of Bock Figure 4, the connection of the tires employs wires or bracing made from steel. This does not



RECEIVED

MAR 26 2001

TO 3600 MAIL ROOM

Atty. Dkt. No. 1423-9
Ser. No. 09/428,508

in anyway resemble a reinforcing section made from the lengths of tire tread or conveyor belt. The same argument also applies to independent claim 40 and its dependent claims.

Claims Rejections under USC § 103

The Examiner is arguing that a construction of a retaining wall having this inclined configuration would have been obvious in the art. Bock does not disclose a retaining wall in which the central axis of each tire is inclined in both the vertical and horizontal directions. Moreover, the Examiner has not provided any evidence or factual reason for drawing his conclusion of obviousness. If it had been so obvious, why, in a relatively mature art, has no one used to this technique? Hence, in the absence of evidence of obviousness, applicant calls for the affidavit under 37 CFR 1.104(d)(2).

Off-setting one course with respect to the next and overlying course has been employed both with concrete and stone walls and also with tires (see e.g. US 4,080,793). However, the inventors have developed a technique for working and preparing the ground in front of an embankment in a manner such that tires can then be placed thereon in courses with their central axis inclined, which results in a stable retaining wall. Hence, in the absence of any evidence in the art or affidavit of personal knowledge, the application should be allowed.

It is noted that page 6, Paper No. 5 lists claims 8-14, 18-20, 33, 36, 43 and 47 as being allowable after certain amendments are made. Applicants have made as many of the amendments as can be made without introducing new independent claims. Needlessly introducing new



RECEIVED

MAR 26 2001

TO 3600 MAIL ROOM

Atty. Dkt. No. 1423-9
Serial No. 09/428,508

RECEIVED
MAR 21 2001
TECHNOLOGY CENTER 3700

independent claims would only enhance costs for both applicant and the U.S. taxpayer who has to pay the cost of excessive printing. It is thought that these and other claims will now be allowed. If these claims are not allowed, applicants reserve the right to submit the allowable claims in an independent form, as may then be necessary.

Claim 1 is allowable since a central axis of each tire is inclined to the vertical. Claim 2 adds the batter angle of 10°-20°. Claim 15 requires a reinforcing section formed by parts cut from tires. Claim 25 calls for a base for the retaining wall. Claim 36 describes how an uncut portion of a tire acts as a hinge. The remainder of the claims depend on and add further limitations to one of these independent claims.

For the foregoing reasons it is thought that the application is in condition for allowance. If the Examiner should find any reason for not allowing the application, he is respectfully requested to telephone the undersigned attorney. Any reasonably necessary amendments will be made promptly.

Reconsideration and allowance are requested.

Dated: 3/16/01

Respectfully submitted,

J. Warren Whitesel
Registration No. 16830
LAFF, WHITESEL & SARET, LTD
401 North Michigan Avenue, Suite 1700
Chicago, Illinois 60611
(312) 661-2100

VERIFICATION OF TRANSLATION

RECEIVED

MAR 26 2001

MAIL ROOM

I, (name & address of translator) Dr. Andreas J. Hartmann of 45 Newman Street,
Newtown, New South Wales 2042, Australia

state the following:

I am fluent in both the English and German languages and capable of translating documents from one into the other of these languages.

The attached document is a true and accurate English translation to the best of my knowledge and belief of: **German document DE 85 13 539 by Manfred Bock**

Signature:

Andreas J. Hartmann

Date:

12 - 3 - 01





Description

RECEIVED

MAR 26
TO 3600 MAIL ROOM

This invention is based on retaining wall for a mound on which plants can be planted and which can be used for noise protection.

Noise protection walls are known in different designs.

The construction of noise protection walls, on which plants can be planted, is costly if preformed concrete parts are being used. This invention is based on the usage of a waste product of our society, which has a problematic disposal, for the design of a noise protection wall.

It is an object of the invention that a spherical body of rubber, eg. a tyre, has been cut off in the area of the measurement strip of one side of the tyre, has been shaped like a basin and has an opening (3) in the centre of the ground-plate (2) and some openings in the tread segment (1).

The plant containers are interconnected using wire or bracings made from non-rusting steel and from a lattice which is filled up with soil layer-by-layer.

Segments for hanging plants are formed at the ends of the layers.

For higher noise protection walls, with the height being above a certain limit, chains with links made from flat pieces of steel are used to connect the plant containers.

Within a short period of time the roots of the plants will grow through the lattice described above which will result in additional stability, and the visible rubber side of the construction will be grown over. This will result in a noise protection wall that fits in harmonically into the landscape.

Fig. 1: Cross section through spherical body made from rubber, with tread segment (1), ground plate (2) with spherical hole (3) and openings for connectors (4).

Fig. 2: A-a horizontal cross section.

Fig. 3: Perspective view of above.

Fig. 4: Example of two parallel chains of tyres connect with belts.

Fig. 5: Vertical view of a range of tyre layers which positioned in a displaced manner.

Fig. 6: Diagonal view of a tyre wall with segment-like plant containers.